

Message Text

CONFIDENTIAL

PAGE 01 BONN 16498 01 OF 02 081943Z
ACTION EUR-12

INFO OCT-01 ISO-00 L-03 CPR-02 CA-01 SCS-06 CIAE-00
INR-10 NSAE-00 PPT-01 PM-05 NSC-05 SP-02 SS-15
/063 W

-----028707 082045Z /73

P R 081929Z SEP 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 1745
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 01 OF 02 BONN 16498

E.O. 11652: GDS
TAGS: PGOV CGEN GE GW BQG
SUBJECT: US-GDR CONSULAR CONVENTION: FRG COMMENTS ON
"CIRCLE OF PERSONS" APPROACH

REFS: (A) STATE 216177; (B) STATE 213663

BEGIN SUMMARY. ON SEPTEMBER 7, EMBOFF DISCUSSED
BILATERALLY WITH FRG BONN GROUP REP VON BRAUNMUEHL THE
FRG FOREIGN OFFICE QUESTIONS AND COMMENTS ON THE TEXT OF
THE PROPOSED "CIRCLE OF PERSONS" APPROACH TO THE GDR.
MOST OF THE FRG QUESTIONS ARE FOR PURPOSES OF CLARIFI-
CATION AND REASSURANCE; NO OBJECTION WAS RAISED TO THE
USE OF THE WORD "CITIZEN." WE UNDERSTAND THAT THE
FOREIGN OFFICE'S LEGAL DEPARTMENT HAD A LONGER LIST OF
QUESTIONS, CONCERNING WHAT THE US WOULD DO IN CONCRETE
HYPOTHETICAL CASES, BUT THAT POLITICAL DIRECTOR BLECH
CUT THE LIST DOWN ON THE GROUND THAT THESE CAN BE DEALT
WITH AT THE TIME SUCH CASES IN FACT ARISE. AFTER
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PAGE 02 BONN 16498 01 OF 02 081943Z

CONSULTATION WITH THE FRG IS COMPLETED, WE WILL INTRODUCE
THE SUBJECT IN THE BONN GROUP. ACTION REQUEST:
DEPARTMENT'S RESPONSE TO FRG QUESTIONS AND COMMENTS FOR
TRANSMISSION TO FRG. END SUMMARY.

1. AS INSTRUCTED, EMBASSY HAS DISCUSSED TEXT OF THE
PROPOSED "CIRCLE OF PERSONS" APPROACH WITH FOREIGN

OFFICE. FRG BONN GROUP REP VON BRAUNMUEHL, IN A SEPTEMBER 7 MEETING WITH EMBOFF, SAID THAT THE FRG APPRECIATED THE WILLINGNESS OF THE US TO CONSULT ON THIS MATTER WHICH IS OF VERY GREAT IMPORTANCE TO THE FRG. HE SAID THAT, AFTER REVIEW, THE FOREIGN OFFICE HAD THE COMMENTS AND QUESTIONS SET OUT BELOW ON THE PROPOSED TEXT.

2. FOR PURPOSES OF CONVENIENCE, THE TEXT (REF B) IS AS FOLLOWS:

"THE GOVERNMENT OF THE UNITED STATES OF AMERICA WISHES TO ASSURE THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC THAT, WITH REGARD TO THE BILATERAL US-GDR CONSULAR CONVENTION SIGNED THIS DATE, CONSULS OF THE GDR WILL HAVE THE RIGHT OF ACCESS TO GDR CITIZENS IN THE UNITED STATES ON PASSPORTS OF THE GDR CONTAINING US ENTRY VISAS. NO GDR CITIZEN WILL BE FORCED TO SEE CONSULAR OR OTHER OFFICIALS OF ANY OTHER STATE AGAINST HIS OR HER WILL."

3. THE FRG QUESTIONS AND COMMENTS ARE AS FOLLOWS:

A) IN THE FIRST SENTENCE, WHICH CONCERNS PRIMARILY THE GDR, "RIGHT OF ACCESS" IS USED. IN THE SECOND, CONFIDENTIAL

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PAGE 03 BONN 16498 01 OF 02 081943Z

WHICH IS AN INDIRECT REFERENCE TO THE FRG, "TO SEE" IS USED. WHAT IS UNDERSTOOD BY "RIGHT OF ACCESS," I.E. IS THAT. THE RIGHT TO SEE ON A SINGLE OCCASION A PERSON WHO DOES NOT WANT TO SEE THE CONSULAR OFFICER OR THE RIGHT TO SEE SUCH A PERSON ON REPEATED OCCASIONS IN SPITE OF THE PERSON'S OBJECTIONS? THE FRG CONCERN IS THAT MULTIPLE VISITS IN THESE CIRCUMSTANCES COULD ENABLE THE GDR CONSULAR OFFICER TO HARRASS OR INTIMIDATE.

B) IS THERE A DIFFERENCE BETWEEN "RIGHT OF ACCESS" AND "TO SEE," AND IF SO, WHAT? IF THERE IS NO DIFFERENCE SHOULD DIFFERENT TERMS BE USED SINCE THESE MAY SUGGEST TO THE GDR THAT THE GDR IS BEING ACCORDED RIGHTS OF PROTECTION (OTHER THAN THE RIGHT TO SEE AN UNWILLING CITIZEN) WHICH ARE NOT BEING GRANTED TO THE FRG.

C) THE FRG ASSUMES THAT THE USE OF THE TERM "GDR CITIZEN" CANNOT BE INTERPRETED (BY THE GDR) AS INDICATING THAT THE US HAD CHANGED ITS POSITION FROM THAT TAKEN DURING THE NEGOTIATIONS AND HAD ACCEPTED IN ITS TOTALITY THE GDR STANDPOINT ON GERMAN NATIONALITY. DOES

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PAGE 01 BONN 16498 02 OF 02 081944Z
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P R 081929Z SEP 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 1746
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AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
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USMISSION USNATO

C O N F I D E N T I A L SECTION 02 OF 02 BONN 16498

THE US AGREE WITH THIS ASSUMPTION OR DOES THE US
BELIEVE THAT A CLARIFICATION ON THIS POINT SHOULD BE
GIVEN THE GDR?

D) WITH REGARD TO THE SECOND SENTENCE, WHICH
INDIRECTLY REFERS TO THE FRG, THE FRG ASSUMES THAT THE
PROVISIONS OF THE SECOND SENTENCE DERIVE FROM A
GENERALLY RECOGNIZED RULE OF INTERNATIONAL LAW AND THAT
THE GDR CANNOT CONCLUDE FROM THIS THAT THE US IS, BY
INCLUDING THIS PROVISION, INTRODUCING A NEW RULE. VON
BRAUNMUEHL SAID THAT THE FRG CONCERN IS THAT IF THIS IS
NOT A GENERALLY RECOGNIZED RULE, THE GDR MIGHT USE THE
CONCEPT TO THE DISADVANTAGE OF THE FRG WHEN NEGOTIATING
CONSULAR CONVENTIONS WITH THIRD STATES AND THAT THE
UNSUSPECTING THIRD STATES, FOR EXAMPLE, MIGHT
INCLUDE A PROVISION WHICH GOES BEYOND THE US TEXT.

CONFIDENTIAL

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PAGE 02 BONN 16498 02 OF 02 081944Z

VON BRAUNMUEHL SAID THAT THE ONLY ANALAGOUS CASE HE COULD THINK OF WOULD BE THAT WHERE A DUAL CITIZEN ENTERS THE US ON THE PASSPORT OF ONE OF HIS COUNTRIES. WOULD THE US GRANT A RIGHT OF ACCESS TO THE OTHER COUNTRY TO SEE SUCH A CITIZEN AGAINST HIS WILL? HE SAID THAT IF THE US CAN SAY THAT THE RULE CONTAINED IN THE SECOND SENTENCE IS GENERALLY RECOGNIZED, AND THAT THE US ACTION IS NOT CONSTITUTIVE, THE FRG WILL BE SATISFIED.

HE SAID THAT THE FRG ALSO SEES POSITIVE ELEMENTS IN THIS SENTENCE. IF THE GDR ACCEPTS IT, IT HAS IMPLICITLY RECOGNIZED THE RIGHT OF THE FRG TO GRANT CONSULAR PROTECTION TO RESIDENTS OF THE GDR.

E) THE FRG ASSUMES THAT THE FRG WILL BE PERMITTED TO OFFER CONSULAR PROTECTION TO WILLING RESIDENTS OF THE GDR,, EVEN AGAINST THE WISH OF THE GDR, AND WOULD APPRECIATE CONFIRMATION OF THIS.

F) IF THE US/GDR CONSULAR AGREEMENT IS SIGNED, THE FRG WOULD LIKE AN EXCHANGE OF NOTES ALONG THE LINES OF THAT BETWEEN THE UK AND THE FRG REGARDING THE CONTINUED FRG CONSULAR PROTECTION RIGHTS OF GERMANS FROM THE GDR. THE FRG WOULD WANT THIS TO BE DONE AT THE SAME TIME THE GDR AND US SIGN THE CONSULAR AGREEMENT. HE ASKED FOR CONFIRMATION OF OUR WILLINGNESS ON THIS POINT.

4. COMMENT: WE TOLD VON BRAUNMUEHL THAT WE WOULD TRANSMIT THESE QUESTIONS AND COMMENTS IMMEDIATELY. FYI: ONCE DISCUSSIONS ARE COMPLETED WITH THE FRG, WE WILL CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 16498 02 OF 02 081944Z

INTRODUCE THE MATTER IN THE BONN GROUP WHERE WE HOPE THINGS WILL PROCEED QUICKLY WITH THE BRITISH AND FRENCH.

5. ACTION REQUESTED: DEPARTMENT'S RESPONSE TO FRG QUESTIONS AND COMMENTS FOR TRANSMISSION TO FRG. MEEHAN

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